

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE
WRIT PETITION NO. 3841 OF 2006

Ramkrishna Chhatrapati Patil

..Petitioner

Vs.

Smt. Anita Bhagwan Sakpal and ors.

..Respondents

Mr. P.M. Pradhan for petitioner.
Mr. S.M. Kamble for respondent no.1.
Mr. S.P. Thorat for respondent no.2.
Mr. A.H. Palekar, AGP for respondent nos.3 to 6.

CORAM: B.H. MARLAPALLE, J.

Date : August 3, 2006.

P.C.:

1. Heard Mr. Pradhan the learned counsel for the petitioner.

2. Rule. Mr. Kamble waives service for respondent no.1, Mr. Thorat waives service for respondent no.2 and the learned AGP appears for respondent nos.3 to 6 and waives service for them. By consent petition is taken up for final hearing forthwith.

3. This petition assails the Judgment and Order of the Additional Commissioner, Konkan Division,

Mumbai rendered on 24/4/2006 in Election Petition No.192 of 2004 thereby allowing election petition filed by the respondent no.1 challenging the election of the petitioner. The petitioner came to be elected from the Constituency No.30(i)(D) pertaining to the Industrial Society to Managing Committee of the respondent no.1-Bank in the election held on 1/2/2004. The said election came to be challenged on the ground that the present petitioner was a defaulter and he had not paid an amount of Rs.54,201/- to the Maharashtra State Co-operative Marketing Federation Ltd. for the purchase of animal food and, therefore, he was not eligible to contest the election in view of the provisions of Section 73FF of the said Act and amongst the documents submitted before the Election Tribunal were (a) Statements for the month of August 2001 to January 2004 indicating arrears of M/s. Patil Dairy Firm (Proprietor Shri R.C. Patil), letter dated 28/7/2003 sent by the Maharashtra State Co-operative Marketing Federation Ltd. which referred to earlier letter dated 22/3/2003 indicating that the petitioner was called upon to deposit the amount of Rs.54,201/- and the letter dated 29/12/2003 sent by the respondent no.2 - Bank.

4. From the impugned decision of the Election Tribunal it doesn't appear that parties were called upon to adduce evidence and if the Election Tribunal was satisfied that it was not necessary to do so, it was necessary to pass such an order indicating its satisfaction for not recording evidence. The procedure to deal with the election petitions and as has been laid down in Section 144-T of the Act read with Rule 76 of the Maharashtra Specified Co-operative Societies Elections to Committees Rules, 1971 is mandatory. The trial of the election petition has to be held in the manner specified and subsection (3) of Section 144-T states that the Specified Officer to function as the Election Tribunal while exercising the functions conferred upon him/her by or under this Chapter, shall have the same powers as are vested in a Court in respect of (a) proof of facts by affidavit, (b) summoning and enforcing the attendance of any person and examining him on oath, (c) compelling discovery or the production of documents, and (d) issuing commissions for the examination of witnesses.

5. The proviso below Rule 76(1) of the Rules of

1971 states that the Commissioner shall have the discretion to refuse for reasons to be recorded in writing, to examine any witness or witnesses if he is of the opinion that evidence of such witness or witnesses is not material for the decision of the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delay the proceedings.

6. It is clear from the impugned decision that the procedure for conducting the trial of the election petition filed under Section 144-T of the Act has not been complied with and it was necessary for the Specified Officer to call upon the party who had filed the above mentioned documents to prove them either by way of an affidavit which would be subjected to cross-examination or by any other evidence. The Specified Officer has the same powers as are vested in a Court in compelling discovery to production of documents, summoning and enforcing attendance of any person and examine him on oath. As the procedure prescribed has not been followed in conducting the election trial of the election petition, the impugned decision is vitiated on this ground alone and without

going into the merits of the said decision, it is necessary to set aside the same and remand the election petition for fresh trial. The parties have agreed that they will co-operate and will appear before the Specified Officer on the given dates so as to complete the trial within the specified time.

7. In the premises, this petition succeeds partly and the same is hereby allowed. The impugned decision dated 24/4/2006 setting aside the petitioner's election is hereby quashed and set aside and Election Petition No.192 of 2004 filed by the present respondent no.1 is restored to the file of the Specified Officer/Additional Commissioner, Konkan Division. The parties are directed to appear before the Specified Officer on 10th August, 2006 between 3.00 p.m. to 5.00 p.m. and submit the list of documents, if any. Oral evidence recording, if any, in the election petition shall be completed before 31st August, 2006 and if some witnesses are required to be summoned, the Specified Officer will have to issue such summons to the witnesses found to be necessary and in any case the election petition shall be finally heard and decided by 30th September, 2006.

During the pendency of the election petition and until it is decided, the petitioner shall not participate in the Managing Committee's meetings which are held for taking policy decisions.

8. Rule made absolute in terms of the above order. No costs. Writ to go forthwith.

9. Certified copy is expedited.

(B.H. Marlapalle,J.)